Supreme Court, U.S.
FILED
MAR 16 2000
CLERK

(2)

No. 99-1396

IN THE SUPREME COURT OF THE UNITED STATES

JAMES L. CHANDLER, et al.,

Appellants,

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, et al.,

Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

APPELLEES' MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED
(Restated)

1. Whether the district court properly declined to impose a settlement agreement that entailed redrawing congressional district boundary lines over the objections of numerous dissenting parties.

2. Whether under the facts found the district court properly dismissed this suit on grounds of laches.

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Pursuant to Supreme Court Rule 18.6, appellees Katherine Harris, Secretary of State, Jeb Bush, Governor of Florida, John Thrasher, Speaker of the House, and Toni Jennings, President of the Senate, move to dismiss the appeal or, in the alternative, to affirm the judgment below on the grounds that the questions presented by the appellants are so insubstantial as not to warrant further argument. The decision below is based on the particular procedural history of this case and the application of settled law, including this Court's precedent. There is no conflict in case law which requires resolution.

STATEMENT OF THE CASE

Appellants filed this action on April 2, 1998, challenging two Florida State Senate Districts and three Florida Congressional Districts (District Numbers 17, 18 and 23). They dismissed their challenge to the State Senate Districts and to Congressional District 17 in October 1999. Juris. St. at 13 and App. at 2. The actions that gave rise to appellants' attack on Districts 17, 18 and 23 date back to 1992 when district boundary lines were redrawn following the 1990 census. Appellants' presentation of subsequent events, however, obscures or misstates certain relevant facts and therefore warrants clarification.

Appellants represent that they brought this action "less than two years after the enactment of the permanent redistricting plan." Juris. St. at 7. The "permanent plan" to which appellants refer was merely the legislative adoption of approved districts, which occurred in 1996. See Chapter 96-192, Laws of Florida. The three-judge court correctly found that Districts 18 and 23 "went into effect in 1992," App. at 6, and further found that appellants "delayed in bringing this action for at least five years." App. at 7.

The three Florida congressional districts subject to appellants' original challenge--Districts 17, 18 and 23--were established by a three-judge court in 1992 after the Florida Legislature failed to adopt a congressional redistricting plan. DeGrandy v. Wetherell, 794 F. Supp. 1076, 1080-81 (N.D. Fla. 1992) (discussing the history of the 1992 congressional redistricting of Florida). These districts were first used for the 1992 election and the boundaries of Districts 17, 18 and 23 have not changed since their adoption. It was on this basis, and the lapse of more than five years, that the three-judge court below held appellants' claim to be unduly delayed and therefore barred by laches. App. at 6-9.

Appellants' Statement of the Case also fails to point out that

District 23 is the only one of the three challenged congressional districts that required Department of Justice preclearance under §5 of the Voting Rights Act of 1965, 42 U.S.C. §1973 et seq. Appellants mistakenly suggest that all of the challenged districts are subject to preclearance under §5. Juris. St. at 22 ("The districts challenged in this case are subject to preclearance.") In fact, only five of sixty-seven Florida counties--Collier, Hardee, Hendry, Hillsborough, Monroe--are subject to preclearance under §5. Juris. St. at 5. District 23 includes a small portion of Hendry County; Districts 17 and 18 do not include any portion of a covered county. The boundaries for these districts are set forth in §8.0002(17), (18) and (23), Fla. Stat. There has been no contention in this case that District 23 and other Florida congressional districts subject to preclearance under §5 were not precleared by the Department of Justice.[1]

Appellants' Statement of the Case improperly attempts to interject various facts that are not in the record below and are not relevant to the issues decided by the three-judge court. For example, appellants contend that "Florida's congressional districts are the least compact and most dispersed congressional districts in the nation." Juris. St. at 4-5 (citing law review articles). See also Juris. St. at 9-10 (purporting to set forth parties' "intent" in settlement discussions). These suggested facts are not relevant to the issue before this Court--whether the three-judge court correctly held that appellants' challenge to Districts 18 and 23 is barred by laches.

In addition, appellants' Statement of the Case fails to

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[1]The other Florida congressional districts subject to preclearance are district 9, 11, 12, 13, 14, 16 and 20. None of those districts is at issue in this case. Of the other districts not subject to preclearance, only District 3 was subsequently challenged and its boundary revised. See Johnson v. Mortham, 915 F. Supp. 1529 (N.D. Fla. 1995); Johnson v. Mortham, 926 F. Supp. 1461 (N.D. Fla. 1996). The revisions to the boundary of District 3 did not affect the boundaries of the challenged districts in this case. Juris. St. at 7.

acknowledge the fact that although appellants filed their lawsuit before the 1998 congressional elections, they did not attempt to challenge the 1998 elections. However, it was not just the 1998 elections that stood to be disrupted by this late-filed suit. The court held that appellants' unilateral delay in bringing this action would have numerous adverse effects on the voters and the state were it to order redistricting in 2000. App. at 8. The Jurisdictional Statement does not dispute those effects, it simply ignores them.

Finally, appellants' Statement of the Case fails to point out that the redistricting they sought for the 2000 election would be based on 10-year old census data. On this point, the three-judge court held:

> [The redistricting sought by Appellants for the 2000 election] would necessarily be based upon 1990 census figures. Such old census figures have been recognized as unduly prejudicial because they fail to provide a basis for "fair and accurate representation of the citizens."

App. at 9 (citation omitted).

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DECLINED TO IMPOSE A SETTLEMENT OVER THE OBJECTIONS OF DISSENTING PARTIES.

The decision below correctly states the general rule that a consent decree cannot dispose of the claims of nonconsenting intervenors. See International Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501, 529 (1986). This Court's recent decision in Lawyer v. Department of Justice, 521 U.S. 567 (1997), does not create any relevant exception to this general rule,

and appellants' reliance on that decision is misplaced. The court below properly distinguished Lawyer. The non-settling party in that case received the relief he sought--i.e., the elimination of an unconstitutionally drawn plan. His claim therefore was satisfied. In contrast to Lawyer, here the district court found that "the dissenting Defendants' objectives in defending this action would be completely frustrated by the proposed settlement." App. at 4. In this connection, it is important to note that the intervening defendants sought, among other things, to defend the legality of all the originally challenged congressional districts. The proposed settlement would have disposed of their claims.

Appellants' argument is at best an oblique response to the court's finding. They contend only that the intervening defendants did not seek "affirmative relief." Juris. St. at 15-17. The logic of the Lawyer decision does not turn on whether a party seeks affirmative relief, and therefore the decision does not excuse appellants' failure to explain why the dissenting defendants' objectives would not have been "completely frustrated" by the proposed settlement. Appellants make no effort to do that. In fact, appellants point out that the parties who intervened as defendants would not have agreed to alteration of district boundaries that had been drawn in 1992. Juris. St. at 18-19. These are not the circumstances that obtained in the Lawyer case.

Appellants indirectly suggest that the Governor's and House Speaker's decision to withdraw their assent to the proposed settlement agreement was ineffective. Juris. St. at 17-18. This is largely beside the point in view of the participation of dissenting intervenors-defendants who never indicated agreement with the proposed settlement. The district court did not reach this issue and this Court need not consider it either, and for the same reason: the settlement was ineffective absent the joinder of the intervenor-defendants.

II. UNDER THE FACTS FOUND, THE DISTRICT COURT PROPERLY DISMISSED THIS SUIT ON GROUNDS OF LACHES.

The district court analyzed defendants' laches argument under applicable case law and found that plaintiffs had delayed asserting their claim; that the delay was not excusable; and that the delay caused undue prejudice. App. at 6-9. Appellants do not dispute these findings nor the case law on which the panel relied. See White v. Daniel, 909 F.2d 99 (4th Cir. 1990), and MacGovern v. Connolly, 637 F.Supp. 111 (D. Mass. 1986). Their failure to do so warrants dismissal of this appeal or affirmance of the judgment of the district court.

Appellants' reliance on Reno v. Bossier Parish School Board ____ U.S. ____, 120 S.Ct. 866 (2000), which was decided three months after the district court ruled in this case, does not save the day. Asserting that "[t]he districts challenged in this case are subject to preclearance," appellants now contend that the Department of Justice will use the 1992 plan as a benchmark for the 2002 redistricting. Hence, they conclude, the "odd shape" of the districts will be perpetuated into the next decade unless challenged in future litigation. Juris. St. at 23.

Appellants never made this argument to the district court. It is fundamentally flawed in any event because the recently decided Reno decision has no application to the facts of this case. First, of course, Reno does not involve a claim of laches and therefore can neither justify nor excuse the prejudice the panel found would result from two redistrictings within a two year period--voter confusion, instability, dislocation and financial and logistical burdens on the state. App. at 8. But appellants' reliance on Reno is even more misplaced for the reason that only five of Florida's sixty-seven counties are subject to preclearance under §5 of the Voting Rights Act, whereas Louisiana is entirely covered by §5. Reno, supra, 120 S.Ct. at 868-869. Because of that fact, in Louisiana a properly precleared and valid plan would necessarily

serve as the baseline against which the next voting plan would be evaluated for purposes of preclearance. Id. at 871. Here, in contrast, two of the three congressional districts originally challenged do not embrace a covered county, and only a small portion of Congressional District 23 even touches upon a covered jurisdiction (Hendry County). The future effects of preclearance under §5 have never been an issue in this case, nor are they now as a result of the Reno decision.

Because the state of Florida is not a covered jurisdiction, it cannot be said that, for §5 preclearance purposes, Florida's current congressional districting plan must serve as a baseline or benchmark for future redistricting. At best that is pure speculation and certainly no basis for disregarding the damaging effects of immediate redistricting which were identified by the court below and which are not contested in the Jurisdictional Statement.

In sum, appellants' fear that the present boundaries for Congressional Districts 18 and 23 may be perpetuated is obviously contrived insofar as it rests on the Reno decision and §5 preclearance requirements.

CONCLUSION

For the reasons set out in the district court's decision on appeal here, and as set out above, the appeal should be dismissed or the district court's judgment should be affirmed.

Respectfully Submitted,

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